



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/731,437

Invention: HORIZONTAL STRING SUPPORTING BOW
HOLDERS

Applicant: RANDY OXLEY

Filed: DECEMBER 6, 2000

TC/A.U.: 3727

Examiner: N. NEWHOUSE

APPELLANT'S AMENDED BRIEF ON APPEAL

(This is an amended Brief submitted as a substitute Brief in response to the Notification
of Non-Compliant Appeal Brief dated 9/29/06)

REAL PARTY IN INTEREST

The only real party in interest is the above referenced , Randy Oxley.

RELATED APPEALS AND INTERFERENCES

There are no related appeals known to Appellant that are related to or which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

This application contains Claims 1-33 and the status of the claims is as follows:

Claims 1, 6-10, 13, 21, 22, 24-26, 28 and 29 are rejected and are on appeal.

Claims 2-5, 11, 12, 23 have been cancelled.

Claims 14-20, 27 and 30-33 have been withdrawn.

STATUS OF AMENDMENTS

Proposed amendments to the finally rejected claims were discussed with the Examiner during a telephone interview on July 28, 2004; however, none of the proposed amendments were entered by the Examiner.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

The only independent claim involved in this appeal is Claim 1. Claim 1 is directed to a holder for supporting a string bow in a generally horizontal position outwardly from a hunter's body at a position below the hunter's waist. This is generally illustrated in Fig. 6 of the drawings with the holder itself shown in Fig. 7. Claim 1 recites a support member 2, a spacing member 4 combined with the support member 2, and an engagement member 6 combined with the spacing member 4 (Specification page 9, lines 15-20, p. 10, lines 1-2). Claim 1 further recites that the support member 2 is comprised of an inward section 8 and an outward section 10 that form an upwardly concave surface (page 10, lines 4-6 and Figs. 1 and 7).

Claim 26

Claim 26 recites that the inward section 34 of the support member 4 is adjustable (Specification, as amended, page 14, lines 1-4).

Neither the independent claim nor any of the dependent claims involved in the appeal contain a means plus function recitation.

GROUND OF REFECTION TO BE REVIEWED ON APPEAL

Whether Claims 1, 6-10, 13, 21, 22, 24-26, 28 and 29, as shown in the Claims Appendix, are patentable under 35 USC § 102(b) as being anticipated by Jones U.S. Patent No. 5,248,072.

APPELLANT'S ARGUMENT

Rejection under 35 USC § 102(b) over Jones U.S. Patent No. 5,248,072

There is only a single ground of rejection to be considered for all the appealed claims. The only independent claim on appeal is Claim 1.

To aid in the Board's full understanding of Appellant's invention, there is included in the Evidence Appendix to this Brief a copy of three pages from Appellant's website. These pages were a part of the file history, having been included with the Appellant's "Response to Office Action/ Amendment" dated January 24, 2004.

Invalidity for anticipation requires that all of the elements and limitations of the rejected claim are found within a single prior art reference. *Carella v. Starlight Archery and Pro Line Co.*, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576 (C.A. Fed. 1991).

Claims 1, 6-10, 13, 21, 22, 24-26, 28 and 29,

Appellant respectfully submits that Claim 1, and Claims 6-10, 13, 21, 22, 24-26, 28 and 29 dependent upon Claim 1, are distinguishable from Jones because Jones does not disclose or suggest a "spacing member." Appellant's claims recite three separate elements: a support member, a spacing member, and an engagement member. As defined on page 10, lines 4-6 of 's specification, the "supporting member 2 is illustrated as a trough . . ." capable of supporting a bow string from which the stringed bow hangs downwardly. In order to comfortably hold the bow at the hunter's side, 's specification

states that a spacing member must "extend [the] support [] a selected distance from a hunter's body and below the hunter's waist"('s specification page 12, line 3).

Jones discloses a "J-shaped tool support member 20" comprising an inner vertical arm 22, a base support 24, and an outer arm 26. (Jones Col. 3, lines 17-20). Jones does not disclose any separate element that can be considered a "spacing member" which spaces the support member outward from the engagement member. In the Appendix to the August 11, 2003 Office Action (a copy of which is included in the Evidence Appendix to this Brief), the Examiner has marked up Jones' FIG. 5 to show what the Examiner perceives as the "spacing member." However, nowhere in Jones' disclosure is the labeled "spacing member" described. The Examiner's labeled "spacing member" is best described in Jones' specification as a "base support 24." Jones' specification makes no reference to a "spacing member" when describing that the "inner vertical arm 22 . . . descends into bulb shaped support 24." (Jones Col. 3, lines 22-23). Therefore, Appellant's claimed invention is patently distinguishable from Jones because Appellant's claims each contain a functional element (the spacing member) that is not disclosed in Jones.

Even if Jones has a spacing member as shown by the Examiner in the Appendix (which Appellant is not saying that it does), Appellant's claims are still distinguishable from Jones because Jones' "spacing member" is not combined with the support member so as to extend inwardly therefrom. Jones' specification states that the "inner vertical arm 22 . . . descends into bulb shaped support 24," with no reference to any horizontal extension. (Jones Col. 3, lines 22-23). By contrast, Appellant's claims recite "a spacing

member combined with the support member and extending generally inwardly and upwardly therefrom . . ." (emphasis added).

Appellant's spacing member provides a significant advantage over Jones. Appellant's spacing member extends the support member out away from a hunter's body so that the bow hanging downwardly from the device does not interfere with the hunter's legs as the hunter is walking. This functional element is not suggested in Jones because the hammer or other "T-shaped tools" that are to be used in Jones' device are not shown to hang down so far as to interfere with the user's legs.

The "spacing member" labeled by the Examiner in the Examiner's Appendix is referred to as a vertical arm 22 in Jones' specification, with no reference to any outward or horizontal extension. Furthermore, Jones' specification states that the "inner vertical arm 22 . . . descends into bulb shaped support 24," again with no reference to horizontal extension. (Jones Col. 3, lines 22-23). As discussed above, Jones does not disclose a "spacing member" element, however, even if Jones did, Appellant's claims would not be anticipated by Jones because the "spacing member" illustrated in the Evidence Appendix does not extend outwardly past the engagement member. The purpose and definition of Appellant's spacing member, as discussed above, is to put the support member at a distance away from the hunter's body so the hunter's bow does not interfere with the hunter's legs as he/she is walking. This element and function is not disclosed in Jones.

Jones does not disclose any element which can be seen as a "spacing member." Appellant's claimed invention is therefore distinguishable because, as discussed above,

anticipation requires that all of the elements and limitations of the claim must be found within a single prior art reference. Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986).

Claim 26

In addition to the differences recited above that distinguish Appellant's claims from Jones, Appellant's Claim 26 further recites that the "support member inward section is adjustable." Appellant respectfully submits that Jones does not disclose this limitation because it is the support member outward section in Jones that is flexible as shown by Jones' FIGS. 3 and 4.

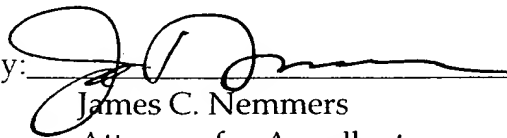
Conclusion

For all of the above reasons, it is submitted that Appellant's claimed invention is not anticipated by Jones and that the rejected claims recite novel and patentable subject matter. It is therefore respectfully requested that the decision of the Primary Examiner be reversed.

The appeal brief fee was previously submitted with Appellant's Brief when originally filed.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Board of Patent Appeals and Interference, US Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on October 20, 2006.



James C. Nemmers, Registered Representative

CLAIMS APPENDIX

1. A holder adapted to support a stringed bow in a generally horizontal position outwardly from a hunter's body at a position below the hunter's waist comprising:
 - a support member;
 - a spacing member combined with the support member and extending generally inwardly and upwardly therefrom; and
 - an engagement member combined with said spacing member and being disposed generally above and inward from the support member;
 - the support member comprising an inward section and an outward section, said sections forming an upwardly concave surface.
6. The holder of Claim 1 wherein:
 - the support member comprises a wall.
7. The holder of Claim 6 wherein
 - the support member wall has an opening formed therein for accommodating an arrow.
8. The holder of Claim 1 wherein:
 - the support member comprises two or more support arms.
9. The holder of Claim 1 wherein:
 - the spacing member comprises a wall having an inward section and an outward section, said outward section being combined with the support member and said inward section being combined with the engagement member.

10. The holder of Claim 1 wherein:

the spacing member comprises an arm having an inward section and an outward section, said outward section being combined with the support member and said inward section being combined with the engagement member.

13. The holder of Claim 1 wherein:

the engagement member comprises a wall having at least two openings formed therein.

21. The holder of Claim 1 wherein:

the engagement member further comprises a strap.

22. The holder of Claim 1 further comprising:

a strap.

24. The holder of Claim 1 wherein:

the upwardly concave surface is rounded.

25. The holder of Claim 1 wherein:

the support member further comprises a bottom side connected to the inward section and the outward section and extending therebetween.

26. The holder of Claim 1 wherein:

the support member inward section is adjustable.

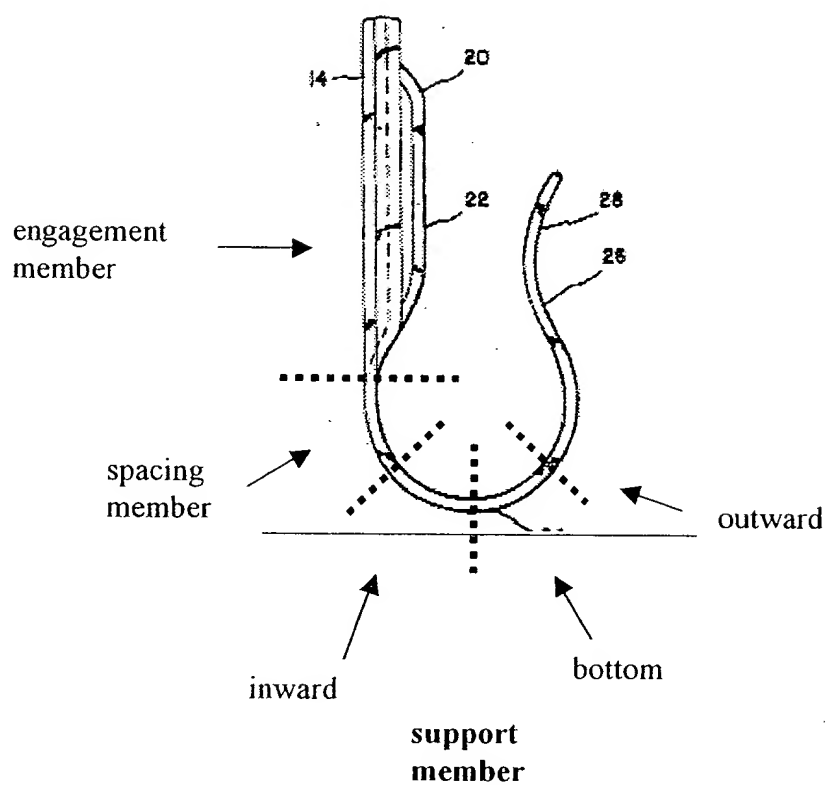
28. The holder of Claim 1 wherein the spacing member extends the support member outwardly from the hunter's body extending at least some distance past the engagement member.

29. The holder of Claim 1 wherein the spacing member extends the support member outwardly from the hunter's body at least 2 centimeters.

EVIDENCE APPENDIX

COPY OF APPENDIX TO EXAMINER'S OFFICE ACTION DATED 8/11/03

APPENDIX



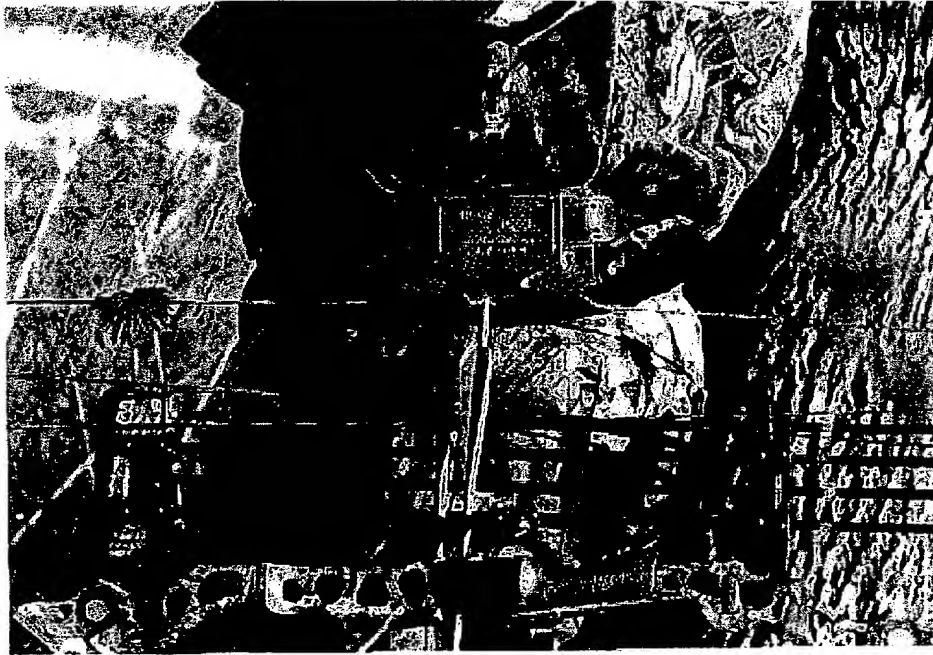
**COPY OF ATTACHMENT TO APPELLANT'S RESPONSE DATED 11/7/03 TO
OFFICE ACTION DATED 8/11/03**

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Your arrow is knocked in & ready

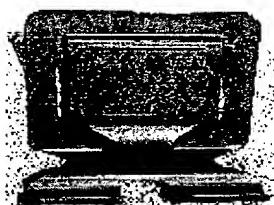
"It ended without a shot, but I learned a valuable lesson. There was a slight wind out of the east on October 26, 2002. The bucks were just starting to chase does. I was in my tree stand about 4:00 p.m. and had just finished a rattling sequence. My bow was hanging in the tree behind me when I heard a rustling from the east. It was a 10 point buck coming right toward me. For a half an hour, the buck meandered about right in front of me but never gave me a chance to turn and grab my bow. Then he just strolled off to the south into some bushes, and he was gone. I had heard about BowRak but didn't have one. The next day I bought a BowRak and once I used it, I knew I would never hang my bow from a tree again. It will always be right by my side and hopefully I will not miss the opportunity for the big one again." Rick Allinger, Cedar Rapids, IA



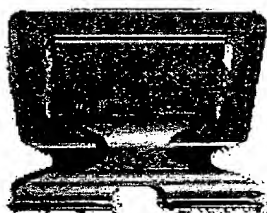
hands are free to scout, rattle or snort

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RELATED PROCEEDINGS APPENDIX

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